

Exhibit No. 10Amendments to House Bill No. 604
3rd Reading CopyDate 4-5-11Bill No. HB 604

For the Senate Finance and Claims Committee

Prepared by Pat Murdo
April 1, 2011 (4:58pm)

1. Title, page 1, line 11.

Following: "FUND"**Insert:** "AND THE STATE COMPENSATION INSURANCE FUND"**Following:** "SECTIONS"**Insert:** "39-71-2311, 39-71-2316, 39-71-2320, 39-71-2321, 39-71-2322, 39-71-2323, 39-71-2351, 39-71-2352,"

2. Page 2, lines 1 through 2.

Strike: "the lesser" on line 1 through "\$50" on line 2**Insert:** "\$13"

3. Page 2.

Following: line 2**Insert:** "(3) (a) The state fund shall, by August 12, 2012, transfer from its surplus to the old state fund account the amount of the outstanding liability determined in subsection (3)(b) from either of the following or a combination of both:

(i) investment earnings and interest on premiums paid between fiscal year 1999 and fiscal year 2003; or

(ii) the amount of surplus as of June 30, 2012, that is greater than a reserve-to-surplus ratio of 2.5 to 1.

(b) The governor's office of budget and program planning shall determine the outstanding liability of the old state fund account as reported in the financial statements as of June 30, 2012, and inform the state fund of the amount to be transferred."

4. Page 2.

Following: line 5**Insert:** "Section 3. Section 39-71-2311, MCA, is amended to read:**"39-71-2311. Intent and purpose of plan -- expense constant defined.** (1) It is the intent and purpose of the state fund to allow employers an option to insure their liability for workers' compensation and occupational disease coverage with the state fund. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which

the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. The prediction must take into account the goal of pooling risk and may not place an undue burden on employers that are not eligible for the tier with the lowest-rated premium for workers' compensation purposes.

(2) Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded, subject to 39-71-2316(1)(h), by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, the board of directors may implement multiple rating tiers as provided in 39-71-2330 and may assess an expense constant, a minimum premium, or both.

(3) As used in this section, "expense constant" means a premium charge applied to each workers' compensation policy to pay expenses related to issuing, servicing, maintaining, recording, and auditing the policy."

{ Internal References to 39-71-2311: None. }

Insert: "Section 4. Section 39-71-2316, MCA, is amended to read:

"39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:

(a) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability insurance upon approval of the board;

(b) sue and be sued;

(c) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(d) collect and disburse money received;

(e) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may be adopted and changed only by using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund is required to belong to a licensed workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, and may use the classifications of employment adopted by the designated workers' compensation advisory organization, as provided in Title 33, chapter 16, part 10, and corresponding

rates as a basis for setting its own rates. Except as provided in Title 33, chapter 16, part 10, a workers' compensation advisory organization or a licensed workers' compensation rating organization under Title 33, chapter 16, part 4, or other person may not, without first obtaining the written permission of the employer, use, sell, or distribute an employer's specific payroll or loss information, including but not limited to experience modification factors.

(f) pay the amounts determined to be due under a policy of insurance issued by the state fund;

(g) hire personnel;

(h) declare dividends if there is an excess of assets over liabilities. ~~However, dividends may not be paid until,~~ adequate actuarially determined reserves are have been set aside, and the reserve-to-surplus ratio is 2.5 to 1 or better.

(i) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

(j) upon approval of the board, contract with licensed resident insurance producers;

(k) upon approval of the board, enter into agreements with licensed workers' compensation insurers, insurance associations, or insurance producers to provide workers' compensation coverage in other states to Montana-domiciled employers insured with the state fund;

(l) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

(m) upon approval of the board, including terms and conditions, provide employers coverage under the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

(n) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

(2) The state fund shall include a provision in every policy of insurance issued pursuant to this part that incorporates the restriction on the use and transfer of money premiums collected by the state fund as provided for in 39-71-2320."

{ Internal References to 39-71-2316:

33-16-1024 x 39-71-2314x 39-71-2323 a} "

Insert: "Section 5. Section 39-71-2320, MCA, is amended to read:

"39-71-2320. Property of state fund -- investment required -- exception. ~~All~~ (1) Except as provided in subsection (2), all premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and

obligations of the state fund. The money premiums collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money premiums and other money paid to the state fund must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments and the provisions of subsection (2), the earnings on investments are the sole property of the state fund except as provided in subsection (2) of this section.

(2) A transfer by the state fund from the account for injuries occurring on or after July 1, 1990, to the account for injuries occurring before July 1, 1990, is not a transfer as described in subsection (1) if the transfer involves interest income or other money paid prior to July 1, 2003, and does not include premiums paid after July 1, 1990."

{ Internal References to 39-71-2320:

39-71-2316 x } "

Insert: "Section 6. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, securities acquired by or through use of premiums, interest, and other money earned or recovered by the state fund, and all interest and penalties on taxes in accordance with 17-2-124 must be deposited in the state fund. Except for a transfer authorized under 39-71-2320(2) or 39-71-2352, the money must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds premiums, penalties, recoveries, interest earned, and other money deposited in the state fund may be spent as provided in 17-8-101(2) (b) ."

{ Internal References to 39-71-2321:

39-71-2319 * x

39-71-2323 a 39-71-2352a } "

Insert: "Section 7. Section 39-71-2322, MCA, is amended to read:

"39-71-2322. Money in state fund held in trust -- disposition of funds upon repeal of chapter. The money premiums, penalties, interest, and other money earned, as listed in 39-71-2321, and coming into the state fund must be held in trust for the purpose for which the premiums and other money was were collected. If this chapter is repealed, the money is premiums, penalties, interest, and other money earned are subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being given to obligations of compensation incurred and existing."

{ Internal References to 39-71-2322:

39-71-2319 * x}"

Insert: "Section 8. Section 39-71-2323, MCA, is amended to read:

"39-71-2323. Surplus in state fund -- payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary actuarially adequate reserves set aside, and an appropriate surplus a reserve-to-surplus ratio of 2.5 to 1 as determined by the board in accordance with 39-71-2330, and if the excess may be refunded safely as determined by the board, then the board, after consultation with the independent actuary engaged pursuant to 39-71-2330, may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities."

{Internal References to 39-71-2323:

39-71-2319 x 39-71-2363 x}"

Insert: "Section 9. Section 39-71-2351, MCA, is amended to read:

"39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date. The legislature also recognizes that the separation of accounts does not absolve the unfunded liability of the state fund and that through the use of accrued interest, sound business practices, and savings that may be achieved there is an opportunity to provide limited transfers to the account for injuries that occurred before July 1, 1990, to help resolve the unfunded liability.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

{ Internal References to 39-71-2351: None. }

Insert: "Section 10. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 -- spending limit -- authorizing transfer of money. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than \$1.25 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid; and

(b) the cost of administering the claims.

(5) An amount of funds in excess of the adequate funding amount established in subsection (4), based on audited financial statements adjusted for unrealized gains and losses, must be transferred to the general fund.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims from the account for injuries resulting from accidents that occurred before July 1, 1990, must be transferred to that account by the state fund, based on an adequate surplus as provided in 39-71-2323, or by the state treasurer from the general fund to the account provided for in 39-71-2321.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred

before July 1, 1990, each fiscal year until all claims are paid."

{Internal References to 39-71-2352:

39-71-201 x 39-71-915 x 39-71-2321 a}"

Renumber: subsequent sections

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